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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,816	08/04/2004	Elmer D. Werth	WER804.1	4815
26092	7590	11/15/2006	EXAMINER	
KYLE W. ROST 5490 AUTUMN CT. GREENWOOD VILLAGE, CO 80111			MCKINLEY, CHRISTOPHER BRIAN	
			ART UNIT	PAPER NUMBER
			3781	

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/710,816

Applicant(s)

WERTH, ELMER D.

Examiner

Christopher B. McKinley

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3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/4/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: In line 16 of paragraph 36 "us" should be --is--.

Appropriate correction is required.

Claim Objections

2. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).
3. Misnumbered claims 9 and 10 have been renumbered 8 and 9 respectively.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wright (4,613,063). Wright discloses the limitations of the claims including a

container (fig. 1, 10) comprising a sidewall (14), first end wall (16), second end wall (38) having an extension wall and end panel (32), the extension wall of smaller transverse dimension than the maximum transverse dimension of the side wall, the end panel joined at the second end line (40) at a position outside the second end line, the end panel includes a pre-formed dispensing opening (34) offset the center, a cap (12) having a central panel (18) and a side skirt (20) rotatably engaging and substantially non-removable from the extension wall (Abstract), the central panel defines a cap opening (22) wherein the said opening can be moved with rotation of said cap between a registered position and a non-registered position, the second wall and said side wall are of one-piece construction (fig. 2), a rotational limiting means (52) and a method of filling a container with contents through said first end and applying said first end (16) by an interlocking connection (line of 15 of abstract). With respect to the "providing" limitations of claim 10, these limitations are "provided" by Wright ('063) as they are present in the product, as noted above.

6. Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Sovari et al. (4,125,203). Sovari et al. discloses the limitations of the claims including a container (fig. 1) comprising a sidewall (1), first end wall (col. 2, line 63), second end wall (top of the container) having an extension wall (wall extending beyond reference number 4 in the vertical direction) and end panel (5), the extension wall of smaller transverse dimension than the maximum transverse dimension of the side wall, the end panel joined at the second end line (fig. 3, 4) at a position outside the second end line,

the end panel includes a pre-formed dispensing opening (fig. 7, 9) offset the center, a cap (3) having a central panel (fig. 3, 3) and a side skirt (8) rotatably engaging and substantially non-removable from the extension wall (col. 2, 68), the central panel defines a cap opening (fig. 4, 15) wherein the said opening can be moved with rotation of said cap between a registered position and a non-registered position, the second wall and said wall are of one-piece construction (fig. 3),

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (4,613,063) in view of Cagan (6,216,904). Wright discloses all the limitations of the claims, as described in par. 5, excluding a sealing means juxtaposed to said pre-formed dispensing opening. However, Cagan teaches a sealing means (fig. 4, 18) juxtaposed to a pre-formed opening for the purpose of closing the receptacle (col. 9, line 46). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Wright with a sealing means juxtaposed to said pre-formed dispensing opening in order to close the receptacle.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (4,613,063) in view of Gentile (3,726,432). Wright discloses all the limitations of the claims, as described in par. 5, excluding a gasket between said central panel and end panel. However, Gentile teaches the use of a gasket between said central panel and end panel for the purpose of sealing the lid and container top together around the opening (col. 5, line 54). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Wright with a gasket between said central panel and end panel in order to seal the lid and container top together around the opening.

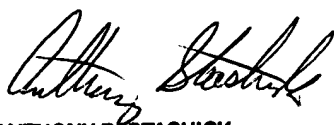
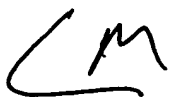
10. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 3 above, and further in view of Weinstein (5,058,778). The references as applied to claim 3 above, disclose the invention substantially as claimed, excluding a vent in the central panel, a button closing the vent with partial periphery connecting the button to the central panel and the placement of the gasket. However, Weinstein teaches a vent in the central panel (fig. 3, 147) and a button closing the vent with a partial periphery connecting the button to the central panel (145) for the purpose of providing airflow in the dispensing process. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Wright with a vent in the central panel and a button closing the vent with a partial periphery connecting the button to the central panel in order to provide airflow in the dispensing process. Regarding the placement of the gasket, it would have been

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obvious to one having ordinary skill in the art at the time the invention was made to have the gasket encircle the sealing means, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher B. McKinley whose telephone number is (571) 272-3370. The examiner can normally be reached on 7:00 AM - 3:30 AM.
12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



ANTHONY D. STASHICK
PRIMARY EXAMINER